

In the United States District Court
for the Western District of Pennsylvania

Bryan Herwin

: case # 05-93 ERIE

:

vs.

: Magistrate Judge Susan Baxter

:

& William McConnell

: District Judge Sean

: McLaughlin

Motion for Speedy Disposition of
Plaintiff's Motion for Summary Judgment

Plaintiff avers the following:

1. Plaintiff has served the defendant in this case with a motion for summary judgment accompanied by a statement of undisputed facts on 3 separate occasions.
2. The first motion for summary judgment was served on the defendant on April 26, 2005 but was later dismissed by the court as being filed prematurely.
3. The second summary judgment motion was mailed to the defendant and the court on June 2, 2005 but it was not filed by the court because it was submitted in a double page format.
4. The third summary judgment motion was mailed to

the defendant, the office of attorney General and the court on June 13, 2005 and it is currently pending before the court.

5. To date the defendant has failed to file a brief in opposition to any of the motions for summary judgment or oppose any of the statements of undisputed facts submitted therewith.
6. Under Local Rule of Court 7.6 if a defendant does not respond to a motion for summary judgment within 15 days of service thereof he is deemed to not oppose the motion.
7. Similarly, under Local Rule of Court 56.1 if the defendant does not controvert a statement of undisputed facts within these same 15 days of service all allegations made in the statement of undisputed facts are deemed admitted.
8. The defendant in this case is currently required to file a responsive pleading or otherwise answer plaintiff's complaint by August 18, 2005.
9. However, because the defendant has failed to oppose the statement of undisputed facts filed by plaintiff and because the resultant admissions contained therein mirror the allegations made in plaintiff's

prejudice him because he would still be entitled to file a motion to vacate the judgement under Fed. R. Civ. B. 60 and raise any defense or objections he may have had that he intended to file in his responsive pleading.

14. If these conclusions are not correct and the court deems that the complaint should therefore be dismissed then it would save the plaintiff, the defendant and the court from wasting time and money on a completely unnecessary motion to dismiss since the civil action in question would have already been resolved.
15. Docket congestion is another judicial interest that the court should take into consideration when deciding whether or not to adjudicate this motion since it may moot completely unnecessary litigation in this court.
16. Speedy disposition of the motion for summary judgement would also prevent the defendant from filing for a third motion for an extension of time in which to respond to plaintiff's complaint.
17. Last, this court will easily be able to adjudicate the motion for summary judgement in an expeditious manner since it only involves one cause of action against one defendant.

Wherefore, for all the foregoing reasons, plaintiff respectfully requests that this honorable court rule on his motion for summary judgement prior to August 18, 2005.

7/24/05

Bryan Kevin

In the United States District Court
for the Western District of Pennsylvania

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vs.

: Magistrate Judge Susan Baxter

:

Ex. William McConnell

: District Judge Sean

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Certificate of Service

I hereby declare that I mailed a true and correct copy of the attached motion for speedy disposition of plaintiff's motion for summary judgment to the following address on July 25, 2005:

Hemal Alexander Mericli
Office of Attorney General
564 Forbes Avenue
Pittsburgh, B.A. 15219

7/24/05

Bryan Herwin